

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Lisa T.,

Plaintiff,

vs.

Martin O'Malley, Commissioner of Social
 Security,

Defendant.

2:23-cv-01583-MDC

Order

Motion to Remand [ECF No. 10]; Cross-Motion
 to Affirm [ECF No. 13]

This matter involves plaintiff Lisa T.'s request for a remand of the Administrative Law Judge's ("ALJ") final decision denying her social security benefits. Lisa filed a *motion for remand* (ECF No. 10) and the Commissioner filed a *cross-motion to affirm*. (ECF No. 13). The Court denies the plaintiff's *motion to remand* and grants the Commissioner's *cross-motion*.

I. Background

Lisa filed an application for a period of disability and disability insurance benefits on August 29, 2019, alleging disability commencing February 2, 2019. AR 221-227. The ALJ held a hearing and denied benefits, which this Court reversed and remanded for further proceedings. *Lisa T. v. Kijakazi*, 2:22-cv-00571-VCF, ECF No. 26 and 27; AR 792 and 793-800. This Court found that remand was necessary because the ALJ did not "explain specifically how the claimant's testimony is inconsistent with the medical evidence" AR 799. In the prior case, plaintiff argued that the definition of the terms "routine" and "conservative" could be used interchangeably. Plaintiff's treatment was not conservative because the injections and narcotic analgesics that Lisa received are not conservative treatments. *Lisa T.*,

1 2:22-cv-00571-VCF, ECF No. 26 at 5:21-23; 7:19; AR 799. While the Court did not find that “routine”
2 and “conservative” could be used interchangeably, the Court did find that the ALJ’s characterization of
3 plaintiff’s treatment as “routine” was “ambiguous, and thus lacks the support of substantial evidence.”
4 AR 798-99.

5 A different ALJ presided over the remand hearing and denied benefits. ECF No. 10. The ALJ
6 calculated that Lisa met the special earnings requirements for a period of disability and disability
7 insurance benefits through September 30, 2024. AR 741. The ALJ used the five-step sequential
8 evaluation process to guide the decision. 20 C.F.R. § 404.1520. At step one, the ALJ agreed that Lisa
9 did not engage in substantial gainful activity since February 2, 2019. AR 742. At step two, the ALJ
10 found that Lisa suffered from medically determinable severe impairments consisting of degenerative
11 disc disease of the lumbar spine and unspecified arthropathies. *Id.* At step three, the ALJ decided that the
12 impairments did not meet or equal any “listed” impairment. AR 743 (citing 20 C.F.R., Part 404, Subpart
13 P, Appendix 1). The ALJ assessed Lisa as retaining the residual functional capacity to perform the
14 demands of light work in that she can lift and/or carry 20 pounds occasionally and 10 pounds frequently;
15 she can sit for about six hours, and stand and/or walk for about six hours per eight-hour workday with
16 normal breaks; she can occasionally climb ramps and/or stairs, but cannot climb ladders, ropes, and/or
17 scaffolds; she can frequently balance, and occasionally stoop, kneel, crouch, and crawl; she must avoid
18 concentrated exposure to extreme heat and cold, vibration, and hazards such as unprotected heights and
19 dangerous moving machinery like chainsaws and jackhammers. AR 744.
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21 At step four, the ALJ compared the residual functional capacity assessed to the demands of
22 Lisa’s past relevant work as a salesclerk, salesperson, and membership solicitor, and decided that she
23 could perform that kind of work. AR 747. The ALJ concluded that Lisa did not suffer from a disability
24 between February 2, 2019, and the date of the decision. AR 748.
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1 Plaintiff argues that the ALJ failed to articulate clear and convincing reasons for rejecting Lisa's
 2 testimony. ECF No. 10 at 5. The plaintiff also argues that the ALJ again states that she received
 3 "routine" treatment. *Id.* at 6. The Commissioner argues in both his counter-motion and response that the
 4 ALJ complied with the remand order because the ALJ clarified the use of the word "routine." ECF No.
 5 13 at 9. The ALJ explained that plaintiff's treatment was routine because it was a "relatively unchanged
 6 treatment regimen." *Id.* The plaintiff argues in her reply that the ALJ failed to articulate clear and
 7 convincing reasons for rejecting Lisa's testimony. ECF No. 15.

8 II. Discussion

9 a. Legal Standard

10 The Fifth Amendment prohibits the government from depriving persons of property without due
 11 process of law. U.S. Const. amend. V. Social security plaintiffs have a constitutionally protected
 12 property interest in social security benefits. *Mathews v. Eldridge*, 424 U.S. 319 (1976); *Gonzalez v.*
 13 *Sullivan*, 914 F.2d 1197, 1203 (9th Cir. 1990). When the Commissioner of Social Security renders a
 14 final decision denying a plaintiff's benefits, the Social Security Act authorizes the District Court to
 15 review the Commissioner's decision. *See* 42 U.S.C. § 405(g).
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17 "On judicial review, an ALJ's factual findings [are] 'conclusive' if supported by 'substantial
 18 evidence.'" *Biestek v. Berryhill*, 139 S. Ct. 1148, 1153 (2019) (quoting 42 U.S.C. § 405(g)). The
 19 substantial evidence threshold "is not high" and "defers to the presiding ALJ, who has seen the hearing
 20 up close." *Id.* at 1154, 1157; *Ford v. Saul*, 950 F.3d 1141, 1159 (9th Cir. 2020) (quoting *Biestek*); see
 21 also *Valentine v. Astrue*, 574 F.3d 685, 690 (9th Cir. 2009) (substantial evidence "is a highly deferential
 22 standard of review"). The substantial evidence standard is even less demanding than the "clearly
 23 erroneous" standard that governs appellate review of district court fact-finding—itsself a deferential
 24 standard. *Dickinson v. Zurko*, 527 U.S. 150, 152-53 (1999). "Where evidence is susceptible to more than
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1 one rational interpretation, it is the ALJ's conclusion that must be upheld." *Burch v. Barnhart*, 400 F.3d
2 676, 679 (9th Cir. 2005).

3 The District Court's review is limited. *See Treichler v. Comm'r of SSA*, 775 F.3d 1090, 1093
4 (9th Cir. 2014) ("It is usually better to minimize the opportunity for reviewing courts to substitute their
5 discretion for that of the agency.") The Court examines the Commissioner's decision to determine
6 whether (1) the Commissioner applied the correct legal standards and (2) the decision is supported by
7 "substantial evidence." *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004).
8 Substantial evidence is defined as "more than a mere scintilla" of evidence. *Richardson v. Perales*, 402
9 U.S. 389, 401 (1971). Under the "substantial evidence" standard, the Commissioner's decision must be
10 upheld if it is supported by enough "evidence as a reasonable mind might accept as adequate to support
11 a conclusion." *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 217 (1938) (defining "a mere scintilla"
12 of evidence). If the evidence supports more than one interpretation, the Court must uphold the
13 Commissioner's interpretation. *See Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005).

15 The Act and the regulations prohibit granting disability benefits based solely on a claimant's
16 subjective complaints. See 42 U.S.C. § 423(d)(5)(A) ("An individual's statement as to pain or other
17 symptoms shall not alone be conclusive evidence of disability"); 20 C.F.R. § 404.1529(a) ("[S]tatements
18 about your pain or other symptoms will not alone establish that you are disabled"). "An ALJ cannot be
19 required to believe every allegation of disabling pain, or else disability benefits would be available for
20 the asking, a result plainly contrary to [the Social Security Act]." *Fair v. Bowen*, 885 F.2d 597, 603 (9th
21 Cir. 1989). where the claimant has provided objective medical evidence of an impairment that could
22 reasonably produce the alleged symptoms, the ALJ evaluates the intensity and persistence of the
23 symptoms. See Social Security Ruling (SSR) 16-3p, available at 2017 WL 5180304. The ALJ must then
24 evaluate whether her statements about symptoms are consistent with (1) the objective medical evidence
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1 and (2) the other evidence in the record. See 20 C.F.R. § 404.1529(c)(2)-(4); SSR 16-3p. An ALJ must
2 make specific findings about a claimant's allegations, properly supported by the record and sufficiently
3 specific to ensure a reviewing court that he or she did not "arbitrarily discredit" a claimant's subjective
4 testimony. See *Lisa T. v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (citing *Bunnell v. Sullivan*, 947
5 F.2d 341, 356-46 (9th Cir. 1991)) (en banc); see also *Smartt*, 53 F.4th at 499 (explaining that in
6 assessing a claimant's subjective allegations, the ALJ must simply "show [her] work" and that "[t]he
7 standard isn't whether our court is convinced, but instead whether the ALJ's rationale is clear enough
8 that it has the power to convince).

9 **b. Analysis**

10 The ALJ remedied the deficiencies raised in this Court's remand order. AR 799; see AR 745-47.
11 In both the prior ALJ decision and the current ALJ decision, the ALJ at times described plaintiff's
12 treatment as "routine management" of her pain symptoms. AR 40, 42, 742, 745. The remand order does
13 not adopt plaintiff's reasoning that the terms "routine" and "conservative" are interchangeable. The
14 Court states in the remand order that the ALJ's characterization of plaintiff's treatment as "routine" was
15 "ambiguous, and thus lacks the support of substantial evidence. AR 798-99. Upon remand, the ALJ
16 clarified the use of "routine" from the prior decision. AR 799. The ALJ explained that he found
17 plaintiff's treatment to be a "relatively unchanged treatment regimen" throughout the relevant period.
18 AR 746. The ALJ reasonably found that this unchanged treatment regimen indicated that plaintiff's
19 treatment was effective at managing her symptoms without changes, which contradicted her allegations
20 of limitations. See *Wellington v. Berryhill*, 978 F.3d 867, 876 (9th Cir. 2017) *Warre v. Comm'r of Soc.*
21 *Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2005).

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23 The current ALJ followed this Court's remand order and did not err in providing a similar
24 summary of the medical evidence. This Court found that remand was necessary because the ALJ did not
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1 “explain specifically how the claimant’s testimony is inconsistent with the medical evidence.” AR 799.

2 In the instant case, after summarizing the evidence, the ALJ provided a thorough explanation of how the
3 medical evidence contradicted plaintiff’s testimony. The ALJ found, for example, no more than mild
4 functional deficits, intact sensation and strength, normal gait, and no use of a walker. AR 746-47. The
5 ALJ reasonably found that this evidence was inconsistent with plaintiff’s allegations that she could only
6 lift a maximum of five pounds and that she had problems sitting, standing, and walking such that she
7 required an assistive device to ambulate. AR 746. Because the medical evidence concerning the period
8 up to the prior ALJ decision remained the same, the ALJ had no reason to change the prior medical
9 evidence summary.

10 The ALJ also made sufficiently specific findings. The ALJ compared plaintiff’s subjective
11 allegations to the objective medical evidence and other evidence that is relevant to the case. AR 744-47.
12 The ALJ noted that plaintiff alleged disability due to low back pain with left lower extremity numbness.
13 AR 744, citing AR 253. The ALJ noted that Plaintiff’s medical records from 2019 and 2020 generally
14 showed only mild discomfort and normal gait. AR 745. The ALJ observed that during physical
15 examinations the plaintiff showed mild discomfort, had a normal gait, was able to stand on her heels and
16 toes, had no muscle atrophy, exhibited normal muscle strength, and had intact sensation. AR 525, 531,
17 533, 536, 538, 542, 544, 627, 630, 636, 642, 717.

18 The ALJ noted that plaintiff had some deficits in flexion and extension of the lumbar spine, but
19 she exhibited normal gait, strength, range of motion, and coordination. AR 745, citing AR 676, 723,
20 734. The ALJ noted that plaintiff described her overall health as “good” and made no mention of
21 ongoing spine problems. AR 745. The ALJ reasonably discounted plaintiff’s subjective symptom
22 testimony based on these contradictions between the objective medical evidence and plaintiff’s alleged
23 symptoms. AR 744-46. The ALJ also reasonably interpreted plaintiff’s description of her “good” health
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1 as referring to her musculoskeletal conditions because these treatment visits concerned plaintiff's
2 musculoskeletal conditions. AR 745. The ALJ also reasonably found that the plaintiff showed
3 significant improvement with prescribed treatment, to treatment with pain medication and steroid
4 injections, which contradicted the extent of plaintiff's alleged limitations. AR 745-47.

5 Regarding plaintiff's daily activities, the ALJ reasonably found plaintiff's subjective allegations
6 to be inconsistent. AR 745-46. The ALJ observed, for example, that plaintiff engaged in an array of
7 daily activities that conflicted with her alleged level of limitation, such as the reports that plaintiff "was
8 exercising more" and stayed active. AR 745-46 and 1016. While plaintiff argues for a different
9 interpretation of the evidence, the task of weighing the evidence lies solely with the ALJ. The ALJ's
10 findings are supported by substantial evidence and therefore entitled to deference.

11 **c. Conclusion**

12 Substantial evidence supports that ALJ's assessment of plaintiff's subjective allegations. The
13 ALJ articulated valid reasons for discounting plaintiff's subjective allegations, in accordance with the
14 applicable regulations and case law. AR 744-47. The ALJ followed the remand order and clarified the
15 use of the word "routine" and noted that plaintiff's conditions responded well to prescribed treatment.
16 AR 745-47. See 20 C.F.R. § 404.1529(c)(3)(iv)-(v). The ALJ also reasonably found that plaintiff's
17 allegations were not consistent with the medical evidence. AR 745-47. See 20 C.F.R. § 404.1529(c)(2);
18 *Smartt v. Kijakazi*, 53 F.4th 489, 498 (9th Cir. 2022). *Wellington v. Berryhill*, 978 F.3d 867, 876 (9th
19 Cir. 2017); *Warre v. Comm'r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2005). The ALJ also
20 considered that plaintiff's daily activities contradicted her subjective allegations. AR 745-46. See 20
21 C.F.R. § 404.1529(c)(3)(i); *Smartt*, 53 F.4th at 499-500. Because substantial evidence supports the
22 ALJ's findings, this Court affirms.
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Accordingly, it is so ordered that:

1. Plaintiff Lisa T.'s *motion for reversal and/or remand* (ECF No. 12) is DENIED.
2. The Commissioner's *cross-motion to affirm* (ECF No. 14) is GRANTED.
3. The Clerk of Court is directed to enter FINAL JUDGMENT in favor of Martin O'Malley, the Commissioner of Social Security.
4. The Clerk of Court shall CLOSE this case.

It is so ordered.

Dated this 11th day of March 2024.



Maximiliano D. Couvillier III
United States Magistrate Judge